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File No. O. Preventive Detention
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Legal Deptt
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Subject:— Opinions under the
Preventive Detention Act, 1950

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C O N T E N T S.

Legal Department File No.0.Preventive Detention/1951.

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Legal Department.

H.D. states that in the case of detention orders issued before the commencement of the Preventive Detention-(Amendment) Act, 1951, under sub-clauses (i) and (ii) of clausx(a) of sub-section(1) of section 3, the period of six weeks for the purpose of reference to the Advisory Board is to be counted with effect from the commencment of the Amending Act. In cases of detention under sub-clause(iii) of clause(a) and under clause(b) of section 3 the period of six weeks will have to be computed from the date of detention under under caluse(b) of section 9(2); but where such orders have already been referredx to the Board under the repealed section 9 no fresh reference to the Board is necessary. The R.L.A. is requested to advise in the matter.

2. Under section 3 of the Preventive Detention Act, 1950 detention orders could be made either under sub-clauses (i),(ii) or (iii) of clause(a) or clause(b) of sub-section(1) of this section. Under section 9 of the Act, before it was amended by Act IV of 1951, reference was required tobe made to the Advisory Board only in cases of detention under sub-caluse(iii) of clause(a),or clause (b), of section 3(1). Section 9 of this Act is substituted by a new section by Act IV of 1951. This new section provides for reference to the Board in every case of detention under the Act. i.e. also in cases of detention under sub-clauses(i)and(ii) of clause(a) of section 3(1) in addition to sub-caluse(iii) of clause(a)of section 3(1) and clause(b)of section 3(1). Since reference to the Board in the case of detention orders under sub-clauses (i)and(ii)of clause(a)of section3(1)is provided for for the first time such cases are required to be referred to the Board within six weeks from the date of the commencement of the Amending Act. I.e. within six weeks from 22nd February 1951, when the person is already under detention(see section 9(2)(a)). In other cases of detention, for example, under sub-clause(iii)of clause

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(a)of section 3(1) and clause(b)of section 3(1) where reference was already made to the Board under the old section 9 no fresh reference to the Board under the new substituted section 8 is necessary. But where no such reference is made to the Board it will be necessary to make a reference under the new section after the commencement of the Amending Act but within six weeks from the date of detention. The view taken by the Secretary, H.D. is correct.

Sd/-

Additional Secretary To Government.

U.R.to H,D.(Spl.) No. 4499,dated the 19th March '51.

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Legal Department.

Detention while undergoing sentence.

R.L.A.'s opinion No.752-Confl., dated 2.12.1949.

In his opinion No.732-Confl, dated the 2nd December 1949, the Remembrancer of Legal Affairs has pointed out that "in law there is an objection to a prisoner serving out his sentence while he is also under detention under another warrant." There is, therefore, no objection to continue the detention of Shris Vaidya and Bhogale while they serve out their sentence awarded to them by the Magistrate.

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Additional Secretary to Government.

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U.R. to H.D.(Spl.) No.717 confl dated the 23rd July1951.

OFFICE OF THE R.L.A.

Detention pending Prosecution validity of

The authorities(Maledath Malyali vs. The Commissioner of Police, 52 Bom.L.R. 268 F.B., Vimalabai Deshpande vs. Emperor A.L.R. 1945 Nag 8 and Dayanand Malf vs. state of Bihar 52 Cr.L.J. 406) lay down two broad propositions that-

(1) If a person is to be prosecuted for an offence, the rights which he has under the Criminal Procedure Code during the period of investigation should not be nullified under the guise of preventive detention.

(2)If a person is to be detained, the detention should be for the purposes for which detention is permissible and should not serve as a cloak for a collateral purpose.

In the present case the incidents covered by the three pending prosecutions are the principal reasons for the broad ground of the detention expressed in para.(a)of the District Magistrate's letter dated 10th July 1951. That being so the detention and the prosecutions are closely linked and having regard to the fact that the detention follows on the heels of pending prosecutions, the Court is likely to take the view that the detention was meant to or did in fact deprive the suspect of his ordinary rights under the Criminal Procedure Code in respect of pending prosecutions and was ,therefore, for a collateral purpose or malafide at law. It would, therefore be advisable to drop the prosecutions.

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Remembrancer of Legal Affairs.

U.R. to H.D.No. 769-confl dated the 3rd August 1951.

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Legal Department.

The view of the Home Department that having regard to the provisions of section 5 of the Preventive Detention Act, 1950(Act..No.IV.of 1950), the Commissioner of Police Bombay is competent to direct the detention of a person at a place which is outside his territorial jurisdiction is correct.

Sd/-

Additional Secretary to Government.

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U.R. to H,D. No. 14537 dated the 12th September 1951.

Legal Department.

As the detenue is known by the name of Murtaza Khan Dastagir and signs as such and as the description of his name is in accordance with the practice in South India to which the detenue belongs, there is no harm in describing him in the detention order by that name.

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Additional Secretary to Government.

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U.R. to H,D.No.15961,dated the 21st September 1951.

Office of the R.L.A.

Shri Motilal is merely enlarged on bail. His detention order is not cancelled and it is still in force. It is held in A.I.R.1950 M.B.17 that even if a person is temporarily released on bail he must be considered to be in the constructive custody of the Court through the surety as his liberty is subject to restraint and he has to be poduced produced before the Court by the surety whenever required. Shri Motilal is, therefore, in such constructive custody and as there is already a detention order in force against him, it would not be legally feasible to pass another order against him till the original one is cancelled. In order to avoid such contingencies in future the best solution would appear tobe to request the High Court in such cases to impose conditions as to good behaviour etc.before a detenue is released on bail.

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Remembrancer of Legal Affairs.

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U.R. to H.D.No.892-conf1 dated the 24th October,1951.

Section 3(1) of the Preventive Detention Act contemplates two kinds of detentions-(1) under clause(a)and(2) under clause(b). To justify the detention under clausd(a) Government must be satisfied with respect to the detenu that with a view to preventing him form acting in a manner prejudicial to matters specified in sub-clauses(i)to(iii), it is necessary so to do;while to justify the detention under clause(b)Government must be satisfied with respect to such person who is a foreigner within the meaning of the Foreigners Act, 1946 that with a view to regulate his continued presence in India or with a view to making arrangements for his expulsion from India it is necessary so to do. It is, therefore, apparent that the grounds for detention under clause(a) and those for detention under clause(b) cannot be the same. In the present case Shri Nazar Dad son of Jalal Khan, who is a foreigner and who is to be served with an expulsion order from the Government of India, is to be detained under clause(b) obviously with a view to making arrangements for his expulsion from India. Consequently, all that can be specified in this order of his detention would be that he has been served with an order of expulsion by the Government of India under the Foreigners Act, the Bombay State Government is satisfied with respect to him that with a view to making arrangements for his expulsion from India it is necessary to detain him under clause (b) of section 3 of the Preventive Detention Act, 1950. It does not appear necessary to state the grounds of his explusion from India in the order of detention. Besides, the grounds mentioned in the draft at p.35 are vague and would not be considered as valid grounds for his detention. The order of detention atp.3 as slighly amended in pencil is in order. The grounds of order of detention proposed to be disclosed as mentioned of p.35 would not be inorder. Government may merely inform him that he has been served with an order of expulsion by the Government of India and Government finds it necessary to detain him for some time under section 3(1)(b)of the Preventiv Detention Act, 1951,with a view to making arrangement

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his expulsion from India.

The presumption made by H.D. in para. 6 of its office note is correct. The period of six weeks within which a reference has to be made to the Advisory Board will count from the date of the service of the new detention order under the Preventive Detention Act of 1950 irrespective of the time the foreigner has already been detained under paragraph 15 of the Foreigners Orders, 1948.

Sd/-

Additional Secretary to Government.

U.R. to P.&,S.D. No. 5998 dated 13-4-51.

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